IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2747 OF 2004

Shri.Jayesh Shah ...Petitioner

Vs.

State of Maharashtra & Anr. ...Respondents

...

Mr. J.A.Udaipur Advocate for Petitioner
Mr. S.R.Shinde, A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : AUGUST 5,2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State. None appears for respondent no.2 though served.

2. The Petitioner is seeking quashing of process issued by the learned M.M. 45th Court, Mumbai in C.C.No.28/S/2000. In the said case process is issued under Section 500 of IPC. Being aggrieved by the order of the learned Magistrate issuing

process against the petitioner, the petitioner preferred Criminal Revision Application No. 4082 of 2004 before the Sessions Court, Mumbai. There was some delay in preferring the said revision application, hence, Misc.Application No. 661 of 2004 was preferred by the petitioner. In the meantime, as the judgment in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors. [2004(4) Mh.L.J. 274]** and **Subramanium Sethuraman Vs. State of Maharashtra and Anr. [2005(1) Mh.L.J.626]** came to be reported, the petitioner was allowed to withdraw the said Misc. Application and the revision and the petitioner approached this Court by filing the present petition.

3. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner pursues the revision which was allowed to be withdrawn, before the concerned Sessions

Court against the order of the Magistrate issuing process.

4. In view of the above, the order of the learned Sessions Judge dated 28.10.2004 passed in Cri.Misc. Application No.661 of 2004 in Cri.Revision Application St.No. 408 of 2004 is set aside. The learned Sessions Judge shall hear the necessary parties and dispose of the said application on merits.

5. Writ Petition is disposed of.

6. Authenticated copy be issued to the parties.

[V.K.TAHILRAMANI,J.]